CWP No.951/2005.

02.1.2007. Present: Mr.Vikas Rathore, Advocate for the petitioner.

Mr.M.S.Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General, for respondent No.1.

Mr. Lovnesh Kanwar, Advocate, for respondent No.2.

The petitioner appeared in the 10+1 regular examination in March, 2004. He passed in all subject except Mathematics and was placed in compartment in the subject Mathematics. Thereafter the petitioner appeared in supplementary examination in September, 2004, but did not succeed. The petitioner thereafter again appeared as a private candidate in the regular examination in March, 2005 under Roll No.503008. Simultaneously he also appeared in 10+2 examination under Roll No.258608. The result of the petitioner was not declared. According to the petitioner, he visited the office of the respondent-Board number of times, but result was not declared. On 16th August, 2005, a telegram was sent by the

respondent-Board to the petitioner, which reads as under:-

> "SPECIAL CHANCE ALLOWED STOP APPEAR AT BHARMOUR EXAMINATION CENTRE FOR PLUSONE EXAMINATION SEPTEMBER 2005 UNDER ROLL 503008 INMATHEMATICS SUBJECT ON 1.9.2005 SESSION EVENING (.)"

Immediate after receipt of the telegram, the petitioner sent a legal notice to the Board through his counsel on 23rd August, 2005. This notice was replied to by the Board, after the examination was held, on 12th September, 2005. The petitioner admittedly did not appear in the examination which took place on Ist September, 2005.

A perusal of the telegram, the contents of which have been quoted above, does not show what was the reason why the result of the petitioner for the examination for which he had appeared in March, 2005 was not declared in the subject of Mathematics. It only informed the petitioner that a special chance has been given to him to appear in the Plus One examination in September, 2005. It was only in the reply to the notice that for the first time the Board informed the

petitioner that his result in the subject Mathematics for Plus One examination in which he had appeared in March, 2005 could not be declared since the answer book of the petitioner had been misplaced and therefore, special chance was being given.

The material on record clearly shows the callous attitude of the respondent-Board towards the students. First of all the Board should ensure that situations such as misplacing of answer book do not take place. This reflects their poor examination system. Secondly, if due to some reason, the answer book had been misplaced, it was the responsibility and duty of the Board to have immediately informed the petitioner that his answer book has been misplaced and he should have been given fresh chance to appear in the next examination. The petitioner was not informed about this fact, and only a telegram was sent to him, just two weeks prior to the examination, asking him to appear in the examination. This was too a short period for a student to prepare for

the examination. The respondent-Board was virtually presenting the petitioner with a `fait accompli'. If the petitioner had appeared in the examination and had not passed the Board would have stated that he had failed and he would have had to again reappear both in classes 10+1 and 10+2.

A candidate is normally entitled to two chances for clearing the compartment examination. By giving the petitioner second chance just a few days before the examination, the Board was virtually putting an end to any probability of the petitioner passing. In our opinion he rightly did not appear in the examination.

Unfortunately, the petition has been pending in this Court for almost one year. Therefore, all we can order while disposing of this petition is that the petitioner shall be permitted to appear as a private candidate in the regular examination in the month of March, 2007. The petitioner shall apply for permission to appear in the supplementary examination in 10+1

(Mathematics subject) within two weeks from today. His form shall be accepted by the respondent No.2 and he shall be issued Roll number. The petitioner has virtually lost two years in this process. Compensation cannot be calculated or awarded in this petition. The petitioner shall be at liberty to file appropriate proceedings for recovery of damages/ compensation from the respondent-Board.

In this petition for the unnecessary litigation forced upon the petitioner and keeping in view the fact that his entire career and future prospects have been delayed by more than two years, we award costs of Rs.20,000/-. The respondent No.2-Board shall pay the costs to the petitioner within four weeks from the date of receipt of a copy of this order. In case petitioner files a suit for damages, the Court can take into account the amount awarded as costs while assessing the damages. In case the petitioner passes in the supplementary examination the Board shall forthwith

declare his result for both 10+1 and 10+2 examination. Petition is disposed of

Copy **Dasti** on usual terms.

Deepak Gupta,
Judge.

January 2, 2007.
(Pds)

(Surinder Singh)
Judge.

C.W.P No.762 of 2003.

02.1.2007. Present: Mr.Rajiv Sharma, Sr.Advocate with Mr. Surinder Sharma,Advocate for the petitioner.

Mr.M.S.Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General, for respondents No.1,2 and 4.

Mr. Shrawan Dogra, Advocate, for respondent No.3.

Mr. Anup Rattan, Central Govt. Counsel for respondent No.5.

Affidavit of the Secretary (Forests) has been filed. According to the Secretary (Forests), there has been no re-encroachment on the forests land from which forest land encroachments had been removed by demolishing the structures. Mr. Rajiv Sharma, learned Senior Advocate, for the petitioner contested the aforesaid averments in the affidavit and submits that he shall file an appropriate application in this regard. As far as the affidavit of the Commissioner, Municipal Corporation is concerned, according to the Commissioner, till date no order of eviction has been passed in respect of the non-forest land belong to the Corporation. It has been

stated that the eviction case are still pending. According to the Commissioner, for forest land from which encroachers were evicted has vested in the State Government and Municipal Corporation has no control over it. However, the affidavit is totally silent with regard to the question whether the Municipal Corporation has made any request to the State Government for appointment of Additional Collectors to deal with the large number of cases, as directed in order dated 6th December,2006.

We also find that in Annexure R-3/B attached to the affidavit of the Commissioner dated 21st December, 2005, the list of employees and the departments have been given, but in some cases, especially with regard to Serial No.26, it has only been mentioned that there are 12 employees of various Banks. The names of the Banks have not been mentioned. The commissioner is directed to file fresh affidavit by 4th January, 2007 in which he shall clearly set out the steps taken for requesting the State

Government to appoint Additional Collector and also shall file the details of the Banks whose employees have encroached upon the public land.

C.M.P. No.2025 of 2006.

Infructuous in view of the orders passed in main writ petition.

C.M.P. No.2026 of 2006.

Allowed. Registry is directed to send notice to all the newly added respondents. Alongwith notice, copy of the order dated 25th November, 2005, 6th December, 2006 and copy of this order shall be sent. No process fee need be filed and the notices shall be sent by the Registry itself.

All the employers who have been freshly impleaded are directed to initiate action, if not already initiated, in accordance with law against the employees who have encroached upon public land. All the newly added respondents shall file their affidavits by 19th March, 2007 clearly stating what action has been taken against their employees.

The Commissioner, Municipal Corporation, Shimla, on or before 19th March, 2007 shall also file an affidavit setting out the details of all the employees of the State Government or the Central Government or State Government Undertakings, Public Undertakings and all other local authorities in respect of the encroachments made on Municipal land (other than forests land). The Commissioner shall also in his affidavit clearly set out what action has been taken against the employees of the Municipal Corporation who have encroached upon the Municipal land and whose names are reflected in Annexure R-3/C with the affidavit dated 27th March, 2006.

Copy **Dasti** on usual terms.

Deepak Gupta,
Judge.

January 2, 2007. (Surinder Singh)
(Pds) Judge.